



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,785	07/13/2001	Laurence Sebillotte-Arnaud	210374US0	1492
22850	7590	04/11/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER OGDEN JR, NECHOLUS	
			ART UNIT 1751	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		NOTIFICATION DATE 04/11/2007		DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/11/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No.	Applicant(s)	
	09/903,785	SEBILLOTTE-ARNAUD ET AL.	
	Examiner	Art Unit	
	Necholus Ogden	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 January 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Response to Amendment

1. Claims 1-22 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Uemura et al (5,14,760) is withdrawn in view of applicant's arguments.

Claim Rejections - 35 USC § 112

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aforementioned claim states that the polyethylene glycol has ethylene oxide units from greater than 800. This limitation is considered new matter because applicant does not have support for an infinite number of ethylene oxide units nor does applicant have support for the data point of 800. Applicant's specification specifically teaches a range of 10-50,000 ethylene oxide units for polyethylene glycols (see specification at page 10) and the examples show PEG-180 as an exemplified data point. Therefore, appropriate corrections and/or clarification is required.
3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al WO (96/28140) or Glenn, Jr. et al (6,277,797).
4. The disclosures of WO '140 and '797 are similar. Therefore, the column and line reference is to the WO '140 reference.

Glenn, Jr. et al discloses a skin cleansing composition comprising 0.5 to 10 parts by weight of fumed silica (page 5, lines 4-37); 30-80 parts by weight of water (page 17, lines 5-11); 5-30 parts by weight of a lathering surfactant such as alkyl ether sulfate, betaines, alkyl polyglucosides and polyoxethylene esters of fatty acids (page 15, line 34-page 17, line 4), and optionally 0.5-20% by weight of polyols such as polyethylene glycol (page 17, line 21-page 18, line 28).

Glenn, Jr. et al do not specifically teach each of the components with sufficient specificity to anticipate the claims.

It would have been obvious to one of ordinary skill in the art to have formulated to the claimed skin cleansing composition as suggested by Glenn, Jr. et al because such skin cleansing compositions of Glenn, Jr. et al teach and require each of the claimed components in their requisite proportions and would have been obvious to the skilled artisan in the absence of a showing to the contrary.

Response to Arguments

5. Applicant's arguments filed 1-30-07 have been fully considered but they are not persuasive.

Applicant argues that Glenn, Jr. et al do not teach or suggest alkoxylated thickening agents. Rather Glenn, Jr. et al disclose polyols that are used as humectants and solutes. Further, applicant argues that Glenn, Jr. et al do not suggest incorporating the polyols in a thickening amount.

The examiner contends and respectfully disagrees because Glenn, Jr. et al teach polyols such as polyethylene glycols having ethylene oxide units up to 200 and

additional polyols such as sorbitol and glycerol (see Glenn, page 17, line 21-page 18, line 28). Moreover, applicant's specification and claims require the same ingredients and the only difference is that Glenn, Jr. et al recites the alkoxylated agents as humectants and solutes. However, it would have been obvious to one of ordinary skill in the art to expect the polyols of Glenn, Jr. et al to have similar characteristics as the same components of the claimed invention, in the absence of a showing to the contrary.

The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. >See, e.g., In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed.Cir. 2006).

"An obviousness rejection based on similarity in chemical structure and function entails the motivation of one skilled in the art to make a claimed compound, in the expectation that compounds similar in structure will have similar properties." In re Payne, 606 F.2d 303, 313, 203 USPQ 245, 254 (CCPA 1979).

Applicant argues that examples and comparative examples 1-3 show the many of the polyols of Glenn, Jr. et al compared with applicant's PEG-120 methyl glucose.

The examiner contends that criticality cannot be established because applicant's examples are not commensurate in scope with the claimed invention where applicant's alkoxylated compound of may include several different ingredients (see claim 1) and the examples are narrowly limited to the specific PEG-120 methyl glucose in very specific proportions. Moreover, applicant does not compare the closest prior art against the

claimed invention to effectively rebut the prima facie case of obviousness. Accordingly, applicant's claimed invention is suggested by the prior art of record, Glenn, Jr. et al, since the compounds of Glenn, Jr. et al are disclosed by applicant's specification and claims and further, applicant does not require any viscous limitations or proportions that are outside of the scope of Glenn, Jr. et al.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholes Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholus Ogden
Primary Examiner
Art Unit 1751

No
4-5-2007